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4 UNITED STATES DISTRICT COURT
5 EASTERN DISTRICT OF WASHINGTON

6 UNITED STATES OF AMERICA,)
7 Plaintiff,) No. CV-72-3643-JLQ
8 SPOKANE TRIBE OF INDIANS,) SPECIAL MASTER'S REPORT AND
9 Plaintiff/Intervenor,) RECOMMENDATION TO ACCEPT 2010
10 v.) WATER MASTER REPORT, APPROVE
11 BARBARA J. ANDERSON, et al.,) PAYMENT OF WATER MASTER'S FEES
12 Defendants.) AND EXPENSES, AND ADDRESSING
13) JOINT MOTION TO EXTEND *INTER*
14) *ALIA*
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14 At the May 17, 2011, hearing for the presentation of the Water
15 Master's 2010 Report (covering October 1, 2009, through September 30,
16 2010), Water Master James Lyerla appeared and presented the Report.
17 Addressing the court and appearing by telephone were Shannon Work and
18 David Lundgren on behalf of the Spokane Tribe of Indians; David
19 Harder, Department of Justice; and Washington State Assistant
20 Attorney General Sharonne O'Shea, for the Washington State Department
21 of Ecology. Also present in the courtroom were John Covert,
22 Department of Ecology, and Nick Pemberton. The matter is before the
23 undersigned following referral by Senior Judge Quackenbush. (ECF No.
24 703.)

25 Regarding the Notice List (Attachment A), it was reported by the
26 Water Master that the Greg Axtell 40 acre parcel has reverted to Paul
27 Schaffner and that Jackie Smartt is not in partnership with Mr.

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1 Axtell. See, also, ECF No. 699 at 1. However, there is no document
2 in the court file to reflect transfer of ownership or clarification
3 of the relationship of these parties. Moreover, the mail sent to Mr.
4 Axtell has been returned as undeliverable. It is recommended that
5 these addresses remain on the Notice List until Mr. Schaffner lodges
6 or files a document reflecting legal ownership change and until and
7 unless Mr. Axtell and Ms. Smartt clarify (by written document on the
8 record) their relationship to the Axtell parcel.

9 Mr. Harder's address should be noted as changed to:

10 Environmental and Natural Resources Division
11 Indian Resources Section
12 South Terrace, Suite 370
13 999 18th St.
14 Denver, CO 80202

15 The parties and counsel are reminded that address changes timely
16 must be given to the Water Master. Address changes made through
17 CM/ECF docketing additionally are required by counsel of record, but
18 are not transferred to the Notice List (Attachment A) without action
19 from counsel. Moreover, the undersigned does not receive notice of
20 address changes unless and until there is an active referral order.

21 Mr. Pemberton stated that because of the timing of this year's
22 Water Master hearing, farmers had difficulty attending as they are
23 especially busy in the fields. **IT IS RECOMMENDED** that the Clerk of
24 the Court set a case management deadline for February 1, 2012, to
25 trigger consideration of issuance of an Order of Referral, thus
26 permitting notice and setting of the 2012 hearing in March.

27 **IT IS FURTHER RECOMMENDED:**

28 1. Except as clarified above, that the Annual Report of the
Water Master (ECF No. 694) (including the 4th Quarter 2010
SPECIAL MASTER'S REPORT AND RECOMMENDATION TO ACCEPT 2010 WATER
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1 compensation \$275.00 expenses + \$3,740 retainer, for a total of
2 \$4,015.00, ECF No. 694 at 2), covering the period of July 1, 2010, to
3 September 30, 2010, be accepted and approved.

4 2. That the Water Master's 2011 compensation agreement remain
5 the same as in previous agreements. Specifically, the Water Master's
6 request for compensation and expenses be approved, consistent with
7 previous agreements (\$3,740 quarterly retainer, and annual expenses
8 not to exceed \$2,500).

9 3. That Mr. Newhouse be ordered to immediately bring current
10 his delinquent payments to the Water Master.

11 **IT IS FURTHER RECOMMENDED** the Joint Motion of Washington
12 Department of Ecology, United States, and Spokane Tribe of Indians to
13 Extend Reporting and Briefing Schedule (**ECF No. 701**) be **GRANTED** as
14 follows:

15 1. Completion of the United States Geological Survey Study and
16 any other factual studies be extended from August 15, 2011, to
17 December 30, 2011;

18 2. The opening brief deadline be extended from January 15,
19 2012, to May 10, 2012;

20 3. The response brief deadline be extended from March 15,
21 2012, to July 10, 2012;

22 4. The reply brief deadline be extended from April 15, 2012,
23 to August 10, 2012;

24 5. In light of the age of the captioned matter and the many
25 filings in the voluminous file predating the court's changeover to
26 CM/ECF, pleadings referenced in the 2012 briefing which predate 1990
27 should be provided also in an organized, hard courtesy copy to the

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1 court and to the parties to permit orderly consideration of the
2 arguments and record.

3 6. The memoranda of the parties be permitted to exceed the 20
4 pages referenced in LR 7.1(f), Local Rules for the Eastern District
5 of Washington.

6 **IT IS FURTHER RECOMMENDED** that the parties be directed to
7 memorialize their positions in the 2012 briefing as to the
8 regulation-of-unauthorized-water-use issue raised at page 1 of the
9 Water Master's Annual Report (ECF No. 694) regarding the effects of
10 the damn on Rail Creek.

11 **OBJECTIONS**

12 Any party may object to a magistrate judge's proposed findings,
13 recommendations or report within fourteen (14) days following service
14 with a copy thereof. Such party shall file with the District Court
15 Executive and serve on all parties written objections, specifically
16 identifying the portions to which objection is being made, and the
17 basis therefor. Any response to the objection shall be filed within
18 fourteen (14) days after receipt of the objection. Attention is
19 directed to FED. R. CIV. P. 6(d), which adds additional time after
20 certain kinds of service.

21 A district judge will make a de novo determination of those
22 portions to which objection is made and may accept, reject, or modify
23 the magistrate judge's determination. The judge need not conduct a
24 new hearing or hear arguments and may consider the magistrate judge's
25 record and make an independent determination thereon. The judge may
26 also receive further evidence or recommit the matter to the
27 magistrate judge with instructions. See 28 U.S.C. § 636(b)(1)(B) and

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1 (C), FED. R. CIV. P. 73, and LMR 4, Local Rules for the Eastern
2 District of Washington.

3 A magistrate judge's recommendation cannot be appealed to a
4 court of appeals; only the district judge's order or judgment can be
5 appealed.

6 The Clerk of the Court shall file this Report and Recommendation
7 and serve copies of it on Senior Judge Quackenbush, and those parties
8 listed on the most recently updated Notice List attached to this
9 Report and Recommendation.

10 DATED June 7, 2011.

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12 S/ CYNTHIA IMBROGNO
13 UNITED STATES MAGISTRATE JUDGE
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NOTICE LIST

CAUSE NO. CV-72-3643-JLQ

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